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ABSTRACT

Colleges in the United Kingdom are currently undergoing significant shifts in how staff and faculty contracts are restructured and this paper takes a close look at why this process is going on, its legal ramifications, and how administrators can manage it. An introduction describes the background to the current trends and explores various ways of organizing and categorizing administrator levels and responsibilities. The next section looks at why a college might decide to change contracts and the following section explores how some college administrators have achieved contract change by offering significant improvements or by capitalizing on retirements, resignations, or promotions. A section on future possibilities suggests ways that faculty pay rates may be more directly related to their duties. The following section, on legal questions, reviews central features of a college employment contract, specific issues (such as contract variations), explicit variation with consent of all parties, termination of the contract, key features of the contract change process, imposed contract change through dismissal and re-engagement, and two phases of imposed contract change. A section on the administrator's role explores effective delivery of new terms and conditions, staff responses and relations, and a checklist of 14 key areas that administrators should address. An appendix lists 14 options for gradual change. (Contains 15 references.) (JB)

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Bob Kedney and
Ted Ulas

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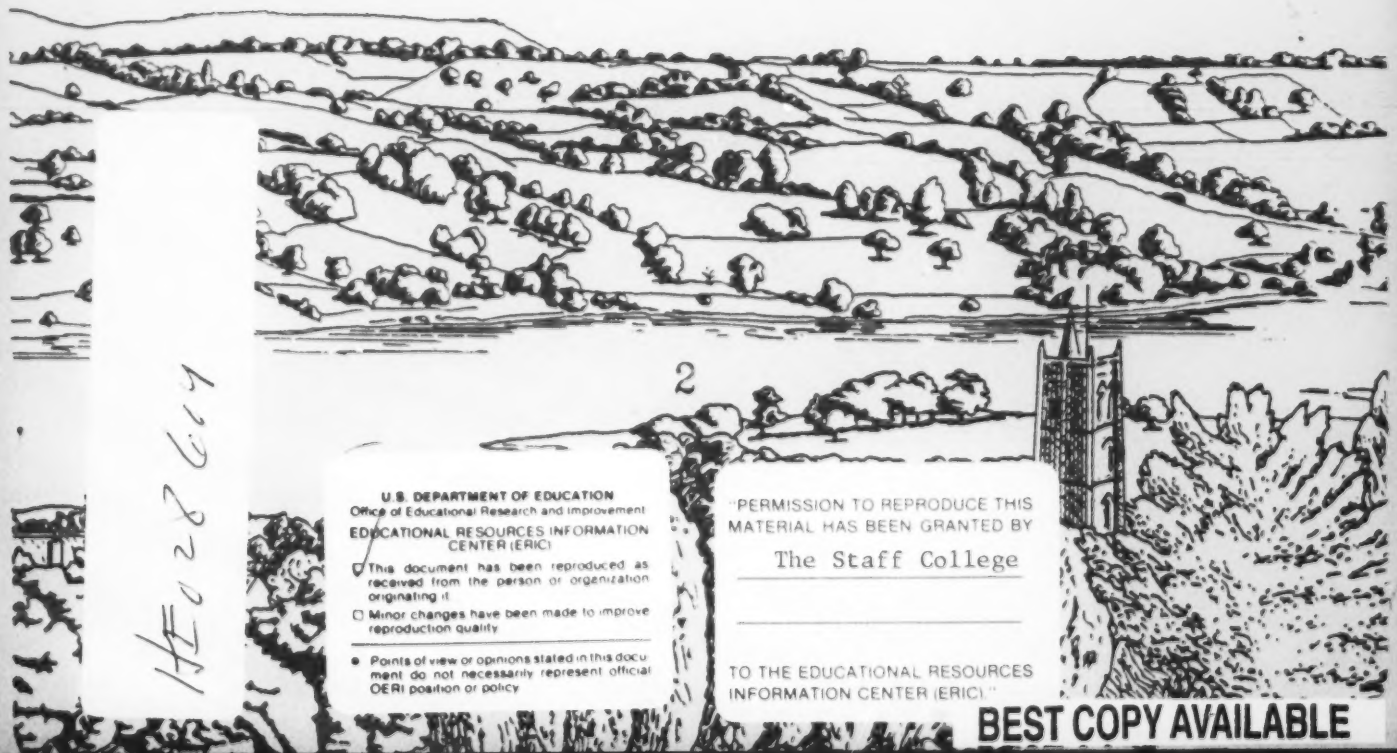

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Mendip Papers

Managing contract change

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Contents

1 Introduction and context

4 Why change contracts?

5 Changing contracts for new appointees

8 Contract change and the law

17 The college manager and the processes of change

20 What next?

22 References

23 Appendix 1

Introduction and context

Should colleges not have enough to think about, someone seems to have decided that changing academic staff contracts is just what is needed to keep the momentum going. Further, it would seem likely that at least some of the changes are to be designed and delivered by each and every college rather than through the 'time-honoured' route of national negotiations.

The long debate at national level on changes to the contracts of managers and lecturers has tended to overshadow the talks on change for business support staff. Unlike the local authorities, college corporations have chosen not to delegate negotiating powers to the national representatives. Rather, the debate focuses around how far both sides can come to a common accord on making recommendations for a national framework within which there will be key elements of local determination.

In the heat of debate, indeed of conflict, it is sometimes difficult to step back to see the wider scene into which a college has to set its position. What is now clear is that corporations have taken a variety of views when formulating key aspects of their college contracts. Almost, but not quite all managers have transferred; support staff terms are the subject of continuing national discussions; consderation of further radical contract change at the local level therefore focuses on lecturers. Analyses have suggested that the position is very variable from one college to another; some have all of their staff on new enabling contracts, whereas other have a majority of their existing staff still of the Silver Book.

The short-term focus of this paper is on those colleges yet to address elements of contract changes for lecturers, the medium-term looks wider to implementation whereas in both the short- and the long-term it seeks to inform managers considering the prospects of continuing development. It is in part technical and in part more generally managerial.

Institutions have to weigh at least four options:

- hope for joint national recommendations which can be accepted locally and which do not simply ignore key issues;
- learn to live with managing the mixed economy;
- pursue a mixture of persuasion and attrition with turnover bringing change at its own pace; or
- accelerating the process by recourse to law.

The position of the one-third of colleges with three-quarters or more of their academic staff on new contracts is somewhat different from that of the one-fifth with less than 30 per cent of their staff on new terms. Paradoxically, it may be the former who first look to legal redress, though the reality of insolvency may yet be sufficient as a 'sound business reason' for others to turn to radical change.

In reality contracts have been varied every year as changes in terms of conditions have followed increases in remuneration. Some elements have traditionally been locally determined and college managers have always been charged with application. The tradition of evolutionary (some might say piecemeal) development based on national negotiations and local interpretations led many to the view that the time had come for a more comprehensive change. The removal of the colleges from the local authority offered 'a window of opportunity' (Ward 1993) for a fresh start, the direction of which is still far from clear.

By the time the dust settles and historians have an opportunity to look back and describe current events life in colleges will have moved on. The codification of the conditions of service known as the Silver Book (NJC 1981) has led to many and varied outcomes. Experience then and now points to at least two key stages that have particular significance for college managers. With the shift to plant bargaining much more of the formal design and decision-taking now lies within the college than has ever been the case before. Gone are the days when the national machinery set out the key terms of specific changes, issued guidance and left local authorities to settle marginal issues, with varying degrees of advice and input from college principals. The time has now gone when the most senior of the colleges' representatives could debate their status as management advisers or staff-side representatives. In the absence of any substantive agreement at the national level the employers' side has offered advice to its members but the details of the contract is very much a local task.

The challenge of role change has been taken up by middle managers as they have been presented with new dilemmas. Not only are they at the critical interface between those leading the pursuit of the new contracts and those whose terms of employment are being changed, they are also charged with the tasks of interpreting and implementing those contract changes. It is they who will be held accountable in due course for the delivery of the new terms. Change, it would seem, is really happening as the college executive is increasingly called upon to look beyond the short-term and specific in developing and delivering the college's strategic plan. Further, the chain of command is shortening, perhaps nowhere more so than in terms of the management of staff. The shift in status and role of the national machinery is becoming clear, the intervening buffer of the local education authority has gone and the corporation is looking to its managers to manage. Middle tier officers are increasingly facing much more than the curriculum decisions they once had to cope with. Administration of the status quo or decisions taken by others is rapidly going the way of the committee culture in many colleges.

Before turning to the specific issues of contract change it may be helpful to set the current demands in context.

Becker and Neuhauser (1975) suggest that staff roles in organisations can be seen broadly as either producing direct services (such as teaching or buildings maintenance) or as co-ordinating and servicing the productive functions. Management,

they argue, is the exercising of choice by those who co-ordinate. If it is not, then the service functions are the bureaucratic application of the rule-book as written by others. It might therefore be thought that historically heads of department and other college managers have been little more than low level administrators interpreting the Silver, Purple and White Books. Analyses of past practice, however, point to creative interpretations that have gone well beyond this. In the current contract debate managers have the opportunity for much greater discretion, both at the outset and thereafter. What is less than clear, however, is how far that input will be from the top, the middle and/or first levels of management in relation to design as well as delivery of the terms of the new conditions of service, and how the use of that decision-making will be related to corporate rather than individual ends.

Individuals work within organisational contexts and colleges differ in their management cultures. It will be for the reader to interpret the general statements made here and fit them to the particular circumstances they know best. Style owes much to history and to the current leadership, but the pace and scale of current and future changes will also be influential. The top to middle relationships are nevertheless likely to be a mix of the following:

- *Practising mushroom management*
  Contract change is felt to be too sensitive an issue for debate and discussion, leaders must lead.

- *The instructional approach*
  In terms of matters of regulation good heads of department are like children; it is better than that they be seen but not heard.

- *The procedural approach*
  It is not for us to question why, we will follow the rule-book, as written by CEF (Colleges' Employers' Forum). That is what we pay our subscription for.

- *The consultative approach*
  Top management seeks the views of other managers, either individually, through the kitchen cabinet or corporately but will decide when they have reflected on the advice that has been given.

- *The participative mode*
  Managers up and down the college meet to debate as a matter of course and opinion is sought on the issues before decisions are taken by the executive. Ownership of the party line by managers is expected.

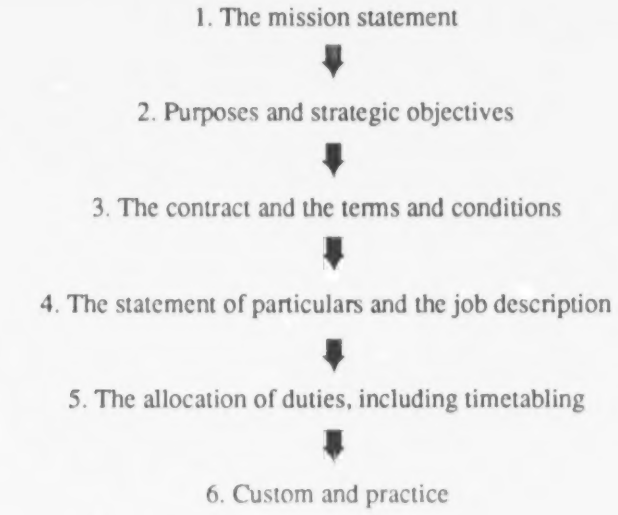
- *The negotiated approach*
  Power is shared and managers debate and shift to a common cause which is underpinned by collective ownership.

The roles of the middle and junior managers vary in each case; particularly so if they try to play a passive role and wait to be spoken to before expressing a view. At one end of the spectrum it can be argued that middle and junior managers already have a complex curriculum load which is being added to by the demands of the funding methodologies. Better that they concentrate on delivering well the traditional tasks of the head of department; let legal and industrial relations issues be picked up by specialists. It can, however, also be argued that such managers are uniquely placed to understand the practical implications and to hear the fears as well as the enthusiasms of colleagues. Before being asked to convert the fine words and aspirations of any change into concrete terms, such managers might expect to give advice and sound early warnings to those about to pronounce.

Colleges are well known as people-based organisations and it is an obvious truism that it is through its staff that the organisation will most clearly express its values and aspirations. The determination and translation of the terms of the contract of employment into practice is thus a key form of expression of the college's priorities. This can be expressed in a highly simplified form as a linear progression flowing down from the college mission and prime values as shown in **Figure 1**.

It can also be argued that the real mission statement should be read from the actions (including custom and practice) as they speak much louder than words. Either way, the model is, in reality, dynamic in that each element interacts with the others. Thus, if managers are to be proactive they need to recognise that their task is to participate in each and every stage. If not they have to react rather than lead, or abdicate their managerial role and fall back to being bureaucratic cyphers without power or influence.

Figure 1: Implementing the college contract


1. The mission statement
2. Purposes and strategic objectives
3. The contract and the terms and conditions
4. The statement of particulars and the job description
5. The allocation of duties, including timetabling
6. Custom and practice

At the contextual level there is often reference to equity, quality, flexibility and the centrality of learning. At the specific level, so the argument goes, timetabling and custom and practice have grown to preclude the primacy of the student, thus leading to the need for change. This separation of theory from practice is unlikely to be resolved by over-simplistic analyses which argue for a top-down model in terms of either design flowing from the college mission, or bottom-up approaches based on winning hearts and minds. Steady growth, or at least stability, has tended to nurture custom and practice in many colleges. Economic pressures and the need for rapid change have given primacy to different strategic objectives in some institutions. To these have to be added a changed political climate in industrial relations, a greater level of exposure than has often been the case before, and a platform for those who wish to exercise leadership. These factors have created an environment in which the status quo is unlikely to be sustained.

Why change contracts?

For many in the FE system the change of the terms of the lecturer's contract is producing more heat than illumination. It can, however, be argued that knowing why current terms should be revised should be:

- the foundation for setting direction;
- the explanation of the perceived need for change;
- the basis for seeking to persuade doubters;
- the sustenance of the conviction of managers; and
- the basis for measuring progress.

Having started there is often a feeling that the process must be finished, and furthermore must be delivered successfully. When reviewing the current scene Jim Horrocks, Principal of Barnfield College, identified and rejected a number of reasons circulating around the system. In a presentation to a Staff College conference he put aside the argument that the changes 'will make a college more effective' for whilst it may reduce the unit of resource it is unlikely to shift the relativities which already exist. In turning to the argument that it 'will get more out of staff' it is generally accepted that some, perhaps many or even the majority, of lecturers work well beyond their contractual minimum. For protagonists it is said to be a means of 'damaging the union' whereas in practice 'attack is the stuff of solidarity'. Horrocks went on to counter the fourth reason given – 'flexibility' – with the argument that it is

the task of draughtsmen of contracts to ensure that they are clear and precise in their intent. 'Contracts,' he argues, 'are by nature prescriptive and are there to pin people down.'

Before addressing some of the points at issue, and Jim Horrocks's own rationale for contract change, it may be helpful to recall that the present position has been reached on the back of long endeavours to tackle many of the challenges which face us now. Yet the current terms and conditions are said to:

- present obstacles to improving productivity;
- restrict modern approaches to pay and conditions;
- present obstacles to functional flexibility; and
- not always be implemented effectively by colleges.

(Vicki Fagg and John Anslow 1992)

From debate and discussion it is possible to deduce a long list of possible reasons for pursuing contract change in colleges. The particular fit in terms of drivers and priorities will differ from college to college. For some, they may appear to be rationalisations rather than what they are – underlying good causes that have not been put and tested in debate. Six clusters are identified here (**Figure 2**) with a number of elements within each. The catalogue is far from comprehensive but may be helpful in exploring relationships between change and the mission and values of the college.

The arguments can be seen to range from the specific to the highly general, and from reactions to external threats and demands to internal realisations of key values. Some lend themselves more readily to debate and negotiation than others within the college management group, the corporation, the recognised trade unions and colleagues in the staff room. It is likely, however, that a sense of direction that is understood, shared and tested in debate will serve the college manager somewhat better than travelling through the processes of contract change and implementation as a voyage of discovery.

Jim Horrocks, in starting from a position at the top of the first FEFC league table of college unit costs, argues that he is looking primarily to his business plan for the rationale for contract change at Bamfield. By comparing the existing contract terms with client needs, the college charter, student agreements and the key elements of the FEFC funding methodology, it is clear that there are potentially major shortfalls in many institutions. These have been bridged by staff through what is variously described as goodwill, discretionary activity or the professionalism. This assumption has underpinned the origins and preamble to what is now the Silver Book. The argument now turns on the degree to which the service should be based on the balance of contracted terms under the direction of management and the level of goodwill and individual commitment. Horrocks and others look to the proportions of voluntary work as being nearer 'one to two per cent rather than 30 to 40 per cent of base contract time'. Such a view does not seek to deny that staff work hard or should be undervalued but rather that complex and rapidly changing organisations need a better basis from which to manage, just as staff need to be valued, protected against unfettered managerialism and have recourse to the equity expressed by colleges in their mission statements.

Changing contracts for new appointees

College managers have been most experienced in achieving contract change by offering significant improvements or by capitalising on such opportunities as retirements, resignation or promotions. Major contractual change has tended to be largely undertaken at national level with pay shifts being related to marginal changes in conditions of service. The latter (opportunistic change) has waited upon individuals to act first, or for growth and the creation of new posts. Movement from established to temporary and from full-time to part-time appointments has been more typical. Interest has been shown from time to time in variations on these themes with the use of fixed term contracts and fractional offers. This somewhat limited range of management options has tended to relate to individuals rather than the workforce more generally. The exception has been the golden handshake offered to the most experienced colleagues to induce them to leave the organisation.

Figure 2: Twenty possible reasons for changing contracts

A. Government policies

The two per cent holdback until flexible contracts are introduced

The need to fund pay rises

B. In response to funding changes

The three per cent efficiency top-slices set for three years

Any shortfall on the student growth targets over the three year period

The impact of convergence

Clawbacks in funding, e.g. student drop-out and qualification rates

Any future funding changes, e.g. higher efficiency rises

C. Responding to the college's legacies

Balancing the books – meeting inherited deficits

Contributions to health and safety and other legal costs

Providing for contingencies and reserves

Capitalization – shifting the pay/non-pay balance

D. Investment in change

Resourcing curriculum change – new subject developments, new delivery methods and/or new student services

Funding job evaluation and equal pay

Bringing in new reward structures

E. Management/structural change

Corporate/executive decisions– strong (macho?) leadership

Trade union pressure – leap-frogging claims

Internal re-organisation or merger/takeover

F. College values and strategic objectives

Equity of treatment for staff and students

Investment in prime values and meeting new needs

Delivering the business plan with efficiency, effectiveness and economy – through coherence.

Flexibility largely lay elsewhere in the creative and co-operative interpretation of the Silver and Purple Books by colleagues within departmental and sectional teams.

Perhaps the most radical shift in recent years has been the introduction of what is sometimes termed 'new working practices'. Para-professional posts long known in schools, universities and training organisations are now beginning to take over some of the extensive range of tasks that could form part of the lecturer's job as defined by the Silver Book. A simple analysis of the elements which can form part of the lecturer's duties can be seen as offering substantial flexibility. When linked to term-time only or fractional posts on college devised or APT&C-related pay scales, the outcome can be both tailored to specific needs of the college and give some measure of security to the post-holder. The following illustrates a range of tasks that can form the basis of new appointments:

- instructors;
- work placement co-ordinators;
- demonstrators;
- workshop supervisors;
- student counsellors;
- learning support tutors/flexible learning facilitators;
- marketing officers;
- learning materials designers and producers;
- invigilators;
- researchers and consultants.

The list can be extended by freeing academic staff from administrative and clerical duties also.

At the time of writing little seems to be known of the scale of such activity, or indeed of the pay rates, though the APT&C scales seem typical. With the shift of lecturers to similar conditions, and the opportunity to look again at their pay structure (notably by replacing the long main grade incremental scale by shorter and more specific ranges) it is likely that future attention will focus on relating pay rates to duties. A cursory review of present practice suggests a somewhat *ad hoc* approach with some para-professional posts above as well as below the current lecturer scale. Yet, as Saunders has indicated, the latter spreads from scale 4 through to the first stage of the principal officer grades (Saunders 1993). There is, however, a marked difference between the choice of pay and condition of a scale 3/4 or a scale 5 grading and that of the long incremental spine of the lecturer scale. Near automatic progression through the latter takes the post holder to an annual salary well beyond that of an instructor or workshop supervisor.

The guidance given by the FEFC to colleges preparing their strategic plans suggests that the human resource management strategy should set out the staffing implications of the college's needs in the medium-term (FEFC 1994). However, colleges have as yet to determine their models for the future establishment, and when they do it is likely that they will have greater fluidity than in the past. In order to explore the possible cash implications of moving some new appointments from lecturer posts to alternative terms and conditions a number of illustrative costs have been calculated. Taking the following factors into account, comparative costs can be drawn up (**Figure 3**):

- the current levels of productivity of around 95 per cent of class contact at the timetabling stage (DFE 1992);

- new lecturer contracts shifting staff from current terms to annualised hours of 900 hours; and

- instructors/supervisors to 1200 hours per year.

The salary costs used here include employers' on-costs. The assumptions can be modelled in a number of ways but the outcomes will consistently point towards change and differentiation. Form, size and pace will no doubt vary from college to college. For example, it may be that the use of a short pay scale from the start of the current lecturer scale will be termed 'assistant' or 'lecturer grade A', but with a broadly similar outcome to what may elsewhere be termed instructor or supervisor. What will, however, have to be determined with care are the duties associated with each post. The comprehensive flexibility of the current description of a lecturer's job will no longer be available to the line manager when such changes are introduced. If custom and practice prevail the college could expect to be open to challenge under the Equal Pay Act.

Figure 3: Comparative 'contact' hourly costs

	Salary inc. on-costs	*95 per cent of annual hours*	*Cost per hour*
Lecturer (Silver Book)	£23,200	673	£34.50
Lecturer (new contract)	£23,200	855	£27.10
Instructor/ assistant lecturer	£14,800	1140	£13.00

Basing contract change on opportunities for new appointments alone calls for an assessment of past and projected levels of turnover and the identification of a range of options for management intervention (see Appendix 1). Clearly cost differentials of the order illustrated above give new impetus to managed change but decisions about best fit will need to take account of more than finance. Morale and the fit of the staffing resource to the college's needs in both the short- and the longer-term will need to be assessed. Consideration will also have to be given to the management of an even more mixed economy. The product of the last decade has given colleges a mix of lecturer I and II posts in the main grade scale, 'Houghton' and substantive senior lecturers, with varying levels of individual protection. These, however, tend to represent past improvements from the perspective of individuals and 'the devil you know'. Putting on one side for a moment the Minister of State's letter, it is in this context that managers will need to weigh the further option of changing/worsening the terms and conditions of existing staff.

Contract change and the law

The legal foundation

A manager who is considering the introduction of contract change has to be aware of the legal foundation of the employment contract. The contract of employment is a contract governed by the principles of contract law. In that respect it is no different from any other contract such as a contract to buy a car or a contract to provide a service such as dry cleaning. The employment contract shares the following features with all contracts:

- it is an agreement;
- it is legally binding; and
- it is made voluntarily by the parties to the contract.

In the contract of employment the employer and the employee agree to carry out terms of the contract; each one promises to fulfil their own part of the bargain. Because the contract is an agreement between two parties, one party cannot impose variation to the contract. If one party refuses to honour the terms of the original contract the other party does not have to accept this; acceptance of variation to the contract has to be agreed either explicitly or implicitly by behaviour. If one party does not stand by the terms of the original agreement, the other party can seek to enforce those terms by using the civil courts – in England and Wales the High Court or the County Court. In these courts individuals have to be represented by someone from the legal profession. Since July 1994 it has been possible for a breach of employment contract case to be taken to an industrial tribunal, where an individual can represent him or herself. However, industrial tribunals will only be able to hear breach of employment contract cases where the employee is no longer employed and the claim to the industrial tribunal has been presented within three months of the ending of the employment. A

contract is made voluntarily between the parties to the contract. In the case of an employment contract, the parties are the employer and the employee. The contract is a personal contract: the employee cannot offer a substitute to work in his or her place; the employer cannot assign the employee to work for another employer, unless that is expressly provided for in the employment contract. If the employment contract is made directly between employer and employee, what role does a trade union that represents an employee play in determining contract terms? The legal position is that the trade union does not play any direct role. The employer may bargain with the trade union and reach agreement; the employees may accept that the trade union represents them fully in negotiations about their contract terms; in the eyes of the law, however, contract is made directly between the employer and the employee. Agreements made between trade unions and employers will not determine the contract terms of an employee unless the employer and the employee expressly agree to incorporate employer-union agreements into the contract.

The employer and the employee will have made a contract of employment when there has been an offer of terms, an acceptance of terms and an agreement that there will be an exchange between them of things that are of value. This exchange is described by the legal term 'consideration'. In a contract of employment for instance the employer promises to pay a wage in return for the consideration of the employee's work; the employee promises to work in return for the consideration of a wage.

Offer of terms, acceptance of terms and consideration, then, are sufficient to form the contract. This process of making the contract does not need to be put down in writing. An oral contract is a perfectly valid contract. The significance of this for employment contracts is that it is common practice for the employer and prospective employee to discuss terms at interview and a verbal offer of employment is made. In law these discussions are capable of fixing the terms of the contract of employment. If the contract terms are determined orally, these will be the terms of the contract even if the employer subsequently writes to the employee asserting different contract terms. A commitment about terms of employment that is given during an interview or discussion with a prospective employee is a contractual commitment. A manager who discusses with an employee variations to standard terms of employment should be aware that he or she may be making a contractual commitment on behalf of the employer.

Is there then always the hazard for the employer that a discussion about terms may override a subsequent written offer of employment? A practical way of ensuring what is documented by the employer forms the terms of the contract of employment is for the employer to write to the employee setting out the terms of the contract for written acceptance by the employee and this document should include a clause stating that its terms supersede all earlier correspondence or discussion on the terms of the employment contract. A clear example of this type of clause is found in the Colleges' Employers' Forum (CEF) model contract for academic staff:

> This contract of employment and any documents expressly incorporated herein constitute the entire terms and conditions of your employment. They cancel and are substitution for any previous letters of appointment or contracts of employment and all other agreements and arrangements (whether express, implied or deriving from any collective agreement) relating to your employment by the corporation.

Those terms that the employer and the employee have agreed and are clearly stated within the contract form the *express terms* of the contract. As well as express terms a contract may contain *implied terms* or terms incorporated from elsewhere. Implied terms are those that can be taken to have been agreed by the employer and employee in creating the contract. The courts have ruled that in every employment contract there are the implied terms of care, fidelity and trust. The duty of care means that every employee should exercise reasonable care and skill in carrying out his or her work; to meet the term of fidelity the employee should provide faithful service and not deliberately obstruct the employer's operations through withdrawing goodwill. The employer and the employee must have mutual trust and confidence. Failure to honour an implied term is a breach of the contract. Where the employer breaches a fundamental term of the contract the

employee can leave and claim constructive dismissal. The destruction of mutual trust or confidence by an act of the employer is often the basis of constructive dismissal claims. Instances where the courts have found that employers broke the implied term of trust and confidence include: seriously undermining the authority of a supervisor; failure to protect an employee being harassed for having worked during a strike; and unreasonable insistence on a psychiatric examination.

The contract may contain terms that are incorporated from elsewhere. The commonest examples are union agreements. In law, the employment contract is made directly between the employer and the employee, even where the employee is a member of a recognised trade union that has negotiating rights over terms and conditions of employment. For union agreements to affect the individual contract of employment, the employee and the employer must themselves agree that those agreements are to be incorporated into the contract. An example of an incorporation clause in an individual contract is to be found in the CEF model contract for academic staff:

> Any changes in the terms and conditions of employment applicable to academic staff appointed by the corporation on the terms and conditions set out herein which may be agreed after the date of this contract between the corporation and any trade unions recognised by the corporation in respect of such staff shall be incorporated automatically into your contract of employment.

Note that the terms of the union agreement are incorporated automatically. This means they will apply whether or not the employee is a member of the union, and whether or not the employee agrees with the change to the terms and conditions. By accepting the incorporation clause the individual member of the academic staff has given a recognised union the authority to determine his or her terms of conditions of employment. In these circumstances lecturers who are not members of the recognised union are denying themselves the opportunity to influence changes to their terms and conditions.

Varying the contract

The employment contract is made by the employer and the employee agreeing to fix the terms which then become legally binding on both parties. How then can a contract be varied? In law there are four ways of varying the employment contract:

- flexible contract terms;
- through negotiation and agreement with a union (when a union agreement is incorporated);
- mutual consent;
- imposed change by dismissal and re-engagement on the new terms.

If there is an express flexibility clause in the contract the employer can rely on that clause to make changes to the employee's terms and conditions. For example, a college employee is contracted to work for the college and cannot be required to work for college subsidiaries unless this is expressly provided for in the contract. For this reason the CEF model contract includes the following clause:

> You may be required in pursuance of your duties to perform services not only for the corporation but also for any subsidiary.

However, the courts will not support a flexibility clause that is written as a catch all. A clause such as 'You may be required to perform any other duties as may from time to time be assigned to you by the principal' is so wide and open to being applied unreasonably that the courts will not allow the employer to rely on it. A clause along the lines of 'You may be required to perform any other duties consistent with your position' would be a more effective flexibility clause as it is not unreasonable. As the change in terms is expressly allowed in the contract there is no requirement for a minimum period of notice of the change. However, in the case of a mobility clause where the employer is entitled to transfer the employee's place of work, the courts would expect the employer to give reasonable notice of the transfer, bearing in mind particularly whether the employee would have to move house.

If the contract contains a clause incorporating union agreements into the contract, then the contract can be varied by reaching a new agreement with the union concerned. Since November 1993 employers have been required to give new employees information about any collective agreements that govern the terms and conditions of their contracts, thereby expressly stating which terms are covered by incorporation and can be varied by union agreement.

The incorporation clause is essential for any union agreement to change the terms and conditions of individual employees. Without such a clause the employer has to get individual consent to the change. An example from the FE sector will illustrate the complications that can arise if there is no incorporation clause. Academic staff on the management spine who were employed in colleges before April 1993 have the relevant National Joint Council provisions that were agreed by NATFHE and the local education authorities incorporated into their contracts. This is so even where the employee was a member of the Association of College Managers, not of NATFHE. In April 1993 the NJC lapsed. The NJC agreed terms and conditions, however, remained as part of the contracts of individuals on the management spine. In December 1993 agreement was reached nationally between the Colleges' Employers' Forum and the Association of College Managers on changes to terms and conditions. This agreement did not change the terms and conditions of individual college managers, even if they were members of ACM. There was no clause in the employees' contracts that provided for incorporation of that national agreement. For the terms of the agreement to apply to a college manager the individual manager had to accept a new contract that superseded the existing one. The CEF advice to colleges therefore was that individual managers be persuaded to accept the new contracts. The new contract contains an incorporation clause so that when a college accepted a national agreement reached by the CEF and trade unions recognised for management spine staff the agreement applied to the individual manager.

An employer may have an agreement with a union that has been incorporated into employees contracts and the employer wishes to change the agreement. The employer will seek to negotiate the change with the union. If no agreement is reached, the employer may decide to terminate the agreement with the trade union, something which the employer is entitled to do. The termination of the agreement with the union does not affect the contract of the individual employee. The provisions of the agreement continue unaffected within the employee's contract. This situation was considered by the courts in a case involving British Gas. Meter readers at British Gas were paid a bonus scheme that had been agreed with the recognised trade union, the Transport and General Workers Union, and this agreement was incorporated in their contracts. British Gas brought in a new type of gas meter that was easier to read and sought to renegotiate the bonus scheme as it was now paying out large sums to the meter readers. The negotiations broke down and British Gas gave the union notice of termination of the agreement, something it was fully entitled to do. British Gas also wrote to each of the meter readers advising them that after a period of notice it would stop paying the bonus. At the end of the notice period, British Gas stopped the bonus. The meter readers took British Gas to court for breach of contract. They won their case. The court ordered British Gas to continue to pay the bonus. Once an agreement is incorporated into an employee's contract the terms of that agreement are legally enforceable by the employee (or the employer) and those terms remain part of the employee's terms and conditions of employment until the employment contract is lawfully varied.

Variation with consent: explicit

As the employment contract is an agreement between the employer and the employee it can be varied with the mutual consent of both parties. Where there is clear acceptance of the change, the consent of the employer and the employee can be made explicit. It is good employment practice therefore when making changes to contracts by individual agreement to write to the employee stating the change and getting the employee's signed acceptance. If the change is to one of the terms and conditions that the employer is required to give the employee as a written particular of employment under the Employment Protection (Consolidation) Act, then the employer must anyway write to the employee giving details of the new terms within one month of the change taking place.

Variation with consent: implicit

Matters are not so clear when the employer makes a change and claims the employee has implicitly accepted the change. The contract of employment, like any other contract, is a set of promises which the parties to the contract agree will all be honoured. If any one of the contract's terms is not honoured this is breach of contract; the offer of an alternative term does not make any difference to the fact that one party has repudiated the contract. The injured party has no obligation to agree to change the terms and is entitled in law to have all the original terms of the contract honoured in full. Where an employer changes the contract without the explicit consent of the employee and the employee continues to work, it may be the case that by doing so the employee has accepted the change and thereby affirmed the new contract. If an employee is faced with a unilateral change by the employer to a fundamental term of the contract the employee may decide to resign and claim constructive dismissal. If the employee works for the period after the change and then resigns, claiming constructive dismissal it is open to the employer to claim that by continuing to work the employee has accepted the new contract. The decisions of the courts in these cases will depend on the facts of the particular case. However, it is clear that if the employee makes no protest about the employer's breach of contract and continues to work and be paid, the courts will take the view that the employee has agreed to the employer's unilateral variation to the original contract.

The employee who does not want to accept a change in terms and conditions imposed by the employer can either resign and make a claim to industrial tribunal for constructive dismissal or continue to work under protest whilst using the law to have the terms of the original contract enforced. Where it is clear that the employer is in breach of contract and the employee has continued to work under protest, the courts have found in the employee's favour and awarded damages together with the declaration that the change is unlawful. For example, the Ferodo company cut the wages of Mr Rigby because of a need to reduce its costs. They did this after failing to get agreement to the change but with notice of the change. Mr Rigby protested, continued to work and started civil proceedings against Ferodo for breach of contract. The courts found in Mr Rigby's favour and awarded him damages of his back pay. The courts did not consider whether Ferodo were justified in needing to cut wage costs; it was a breach of contract and Mr Rigby was entitled to have all the terms of the original contract honoured. The fact that Ferodo gave notice of the breach was irrelevant as Ferodo had no right to depart from the contract in the first place. While an employment contract continues, all of its terms must be met.

Termination of contract

If the contract is ended then a new contract can be on whatever terms the parties agree. So, if an employee refuses to agree to this change of contract that an employer wants, under the law of contract the employer should end the contract – dismiss the employee with contractual notice – and offer re-engagement on the terms the employer wants. Dismissal is itself covered by employment protection legislation and the employer who dismisses can only do so lawfully by meeting certain criteria. For a contract change dismissal to be fair, the employer has firstly to show the reason for the dismissal and that it was a substantial reason such as to justify the dismissal. Secondly, the employer has to satisfy the industrial tribunal that in the circumstances of the dismissal he acted reasonably in treating the reason for the dismissal as a sufficient reason for dismissing the employee. Employment law therefore requires the employer to have substantial grounds for needing to change contracts and also to follow the procedure of a reasonable employer.

When an employer dismisses he has to abide by the legal rights of the employee. In certain types of dismissal he has in addition to abide by the legal rights of a recognised trade union. Since 1975 recognised trade unions have had consultation rights in the event of dismissal for redundancy. The Trade Union Reform and Employment Rights Act of 1993 gave recognised trade unions the right to be consulted in the event of dismissal arising from change of contract. The consultation rights over contract change dismissals include the right to be consulted at the earliest opportunity. The consultation process has to cover consultation about ways of avoiding the dismissals, reducing the numbers affected and mitigating the consequences of the dismissals. The consultation must also be undertaken with a view to reaching agreement with the union. Although of course

because this is consultation and not negotiation about dismissals the management can at the end of the period implement the dismissals, leaving it to the courts to decide whether it has behaved as a reasonable employer.

These consultation rights put the trade union on the same footing in a situation of dismissal arising from change of contract as it has in redundancy dismissals. If the employer does not carry out its obligations to consult with the recognised trade unions the union can get a ruling from an industrial tribunal that the employer pay the employee affected a sum that reflects the loss of pay arising from the failure to consult. Depending on the number of employees dismissed, this can be up to three months pay. It is also likely that the tribunal's view of whether the dismissals were fair or not will be affected by its decision as to whether there had been adequate consultation with the recognised trade union.

Contract change: key legal features

For the college that wants to change the contracts of its staff the key features of the legal status of the contract are the following:

- the contract is an agreement with the employee;
- all the terms of the contract are legally binding;
- if variation of contract cannot be agreed the contract must be terminated;
- the termination of the contract has to be for a substantial reason and carried out in a reasonable manner;
- the recognised trade union must be consulted about the dismissal.

Varying contract: the process

The process of varying contracts is one of introducing change. The procedure for changing contracts should recognise the importance of communication in the effective management of change as well as meeting the key legal requirements. A procedure that meets both these criteria is one that consists of two phases. The first is the process of trying to persuade staff to agree to the change. If that does not succeed the procedure moves to the second phase which is the imposition of the change, by dismissal and the offer of re-engagement on the changed terms.

The employer who intends to change contracts will begin the persuasion phase by identifying the need for change and drafting the changes that are required. The need for change has to be substantial; for example, college management may decide that the college's overall strategic aims require change to the lecturer contract. College management should identify clearly the good reasons for the change. This will help persuade staff to accept the change and if some staff remain unconvinced and have to be dismissed will persuade the industrial tribunal that the college had a substantial reason for dismissal. College management should communicate directly with staff as well as dealing with the unions. The management is responsible for ensuring that the broad principles underlying the change and the key changes proposed are communicated to staff at the outset. Staff and trade unions may suggest a number of modifications to the original management plan. The plan should be revised if there are good grounds for doing so. At the end of the discussion period the college should make a written proposal setting out the changes that are reasonable given the college's position. These changes may mean worse conditions or lower pay for staff. Provided there is a good reason for the changes the employee cannot insist on retaining the original terms of the contract.

The employee should be given time to consider the college's offer. At the end of this period the college will know how many staff have agreed to the new terms. The college will have to make a policy decision about those who have not accepted the change. Are they to be left with their original contacts?

If the college decides that all staff must be on the new terms then the contract change process moves to the second phase. The change is imposed through dismissal and the offer of re-engagement on the new terms. The decision to impose contract change is a serious one and should only be taken in full knowledge that carrying it out will be a complex and perhaps lengthy process. Once a college has started on the phase of imposing contract change it must follow each of the steps meticulously or be at risk of substantial legal

penalties. Should the college decide later that it no longer needs to dismiss those who refuse the contract change it will be difficult for the college to stop the process of contract change without incurring a substantial deterioration in staff relations.

The staff who have not agreed to the change must be informed that they face dismissal. The college should begin the consultation process with recognised trade unions whether the dismissed employees are members of the union or not. The college will write to the union with the following information:

- the reasons for the proposed dismissals;
- the numbers and descriptions of the employees they propose to dismiss;
- the total number of employees of those descriptions;
- that the employees to be dismissed have been selected because they did not accept the proposed changes to their contract;
- that the dismissals will be carried out with full contractual notice; and
- the period over which the dismissals are to take effect.

The consultation has to cover ways of avoiding the dismissals, reducing the numbers involved and mitigating the effects. The college must consult with a view to reaching agreement although there is no requirement that the college must achieve agreement with the union. The penalty for failing to consult properly is that the union can get a ruling from an industrial tribunal that the employees affected are to receive a protective award of one week's pay for every week by which the consultation period was shortened by the employers, subject to a maximum period of 90 days. When a tribunal finds that the consultation with the trade union has not been adequate the likelihood is increased that the tribunal will find the ultimate dismissals to be unfair; tribunals place an importance on consultation with representatives and their staff in the process of contract change to dismissal and re-engagement. The consultation requirements on the employer who is carrying out contract change dismissals are identical to its requirements to consult when carrying out redundancy dismissals. The employer, however, should bear in mind that as in redundancy dismissals consultation with the trade union is not sufficient. Consultation with the individual is equally important. The legal requirement that the college consults recognised trade unions means that the unions have the opportunity for further discussion about the proposed change to contracts. If the college did not make a serious attempt to consult the trade unions in the first place it cannot avoid having to consult in good faith in the second phase.

Consultations with trade unions must take place regardless of the number of employees to be dismissed even if these employees are not members of the union. If 10 or more employees are due to be dismissed the college has to inform the Department of Employment by completing the Department's form HR1 which is also used when dismissing employees on the grounds of redundancy. This notification has to be made at least 30 days ahead of the date of the first dismissal coming into effect, if between 10 and 99 employees are to be dismissed over a period of 30 days or less. If 100 or more employees are due to be dismissed over a period of 90 days or less, then the notification period has to be at least 90 days ahead of the date of the first dismissal taking effect.

Although the consultation with the trade unions has to start at the earliest opportunity, the period from the start of the consultation to the date of the first dismissal taking effect cannot be less than the notification period to the Department of Employment. In this period the college has to consult with a view to reaching agreement but the issue of dismissal notices does not have to wait upon the end of the statutory consultation period; if the employer has a meaningful consultation with the trade unions and that consultation has come to an end, then at that point the college can prepare for issuing individual dismissal notices. However, the college must consult with each employee it is proposing to dismiss. During that individual consultation the employee may give a number of reasons why he or she cannot accept the proposed change of contract. The college must consider these points and decide whether it is being a reasonable employer in requiring that employee change his or her contract. For example, change of working

hours may cause great difficulties to an employee with particular domestic commitments; the employee explains this and suggests an alternative variation to the contract in his or her case. In this situation a reasonable employer would not dismiss the employee's proposal out of hand but would reflect on it. If the employee's proposal does not meet the employer's requirements in proposing changes to contracts, then of course the employer is under no obligation to vary its original plan.

If at this point there are still some staff who have refused to accept the new terms, the college will be faced with dismissing them. Mistakes by the college at this stage may leave it open to claims of *wrongful dismissal* as well as *unfair dismissal.* Wrongful dismissal occurs when the dismissal is contrary to the contract. For instance, if a manager dismisses without having the authority to do so or if the contractual dismissal procedure is not followed. Therefore the dismissal decision must be taken by the person authorised to do so by the college's instruments and articles and the appeal procedure against dismissal followed.

As a reasonable employer the college will consult with individual staff before issuing a dismissal notice. An offer of re-engagement on the new terms will be sent out with the dismissal letter and a reasonable employer would give an employee a final opportunity to accept the new terms.

Imposed contract change: the timescale

The process of imposing contract change through dismissal and re-engagement will take time. In the case of a college dealing with lecturers employed under Silver Book conditions there is the complication that dismissal of notice can only take place on fixed dates in the year – by 30 October to take effect on the 31 December; by 28 February (or 29 February in leap years) to take effect on 30 April; and by 31 May to take effect on 31 August. These fixed dates mean that the colleges have to have completed the process of statutory consultation with the recognised trade union and with individual staff by a specific date. The college that intends to impose contract change should work out a timetable for the steps it will take and ensure that it can hit the notice date. In practice the two phases of the process will take at least two terms. Imposed contract change is not a swift process. It has to be driven by a clear strategic imperative for once a college has decided to impose the change it cannot withdraw from that decision without altering significantly management/staff relations. If the management has good reason for the proposed change, act reasonably and follow the correct procedure any decision will be successfully defended if challenged in an industrial tribunal.

A substantial reason

The change has to be needed by the college. But how essential does the need for change have to be? The Employment Protection Consolidation Act requires the college to be able to convince an industrial tribunal that the refusal of the employee to accept the change was a substantial reason for dismissal. There is a belief that the change required by the employer has to be needed for the survival of the organisation. The courts will not apply that narrow criterion when they consider whether the reason for the change is a substantial one that justifies dismissal. This is well illustrated in the 1994 judgement of the Employment Appeal Tribunal in the case Catamaran Cruisers Limited v Williams and Others (IRLR 386,1994).

Catamaran Cruisers Limited ran a boat service on the Thames providing a riverbus and pleasure cruisers. To improve the company's efficiency the management proposed a number of significant changes to employees' terms and conditions. These were discussed with staff and their recognised union. New terms and conditions were eventually agreed with the trade union and then offered to individual staff. Most accepted. A few refused the new terms and those staff were dismissed. A number of dismissed staff took Catamaran Cruisers Limited to industrial tribunal and claimed unfair dismissal.

The employer claimed that the dismissals had been for a substantial reason in that it had a strong business reason for needing contract change and furthermore it had behaved reasonably. At the industrial tribunal hearing the tribunal accepted the employees' argument that only if the survival of the business depended on change to their contracts could a dismissal for refusing imposed contract change be fair. In the circumstances of Catamaran Cruisers Limited the business would have survived if the contracts had not been

changed, but it would have been substantially less efficient.

The employer appealed against the decision of the industrial tribunal that it had dismissed the employees unfairly. The employment appeal tribunal overruled the industrial tribunal and stated:

> We do not accept as a valid proposition of law that an employer may only offer terms which are less favourable than those which pre-existed if the very survival of his business depends upon acceptance of the terms.

The employment appeal tribunal ordered the industrial tribunal to reconsider the case taking into account the benefits to the employer of the changes it required to have made to the employees' contract.

This judgement, however, does not allow an employer to impose contract change unreasonably. The employment appeal tribunal was careful to state that:

> The fact that the authorities show that an employer is not restricted, when offering less attractive terms and conditions of employment, to a situation where the survival of his business is at stake, does not provide an open door to change ... An employer must demonstrate ... that, if he dismisses an employee for failing to accept changed terms and conditions of employment, his action falls within the balance of reasonableness.

On the question of the reasonableness of the employer's action in the case of Catamaran Cruisers Limited the fact that the management persuaded the trade union and the majority of staff to accept the change and it then followed proper procedures in dismissing the minority of staff who refused to agree to the change helped persuade an industrial tribunal that the management had acted reasonably.

Imposed contract changes: the two phases

The process of imposing contract change can be seen to consist of two phases – in the first the management aims to persuade staff to accept the change and then, in the second phase, the change is imposed. The steps of the two phases are:

Phase 1: persuade

1. Persuade employees of the need for change
2. Draft the changes
3. Discuss these with staff
4. Revise them if there are good grounds for doing so
5. Make a proposal and ensure it is fair and reasonable
6. Give employees time to accept

Phase 2: impose

7. If staff do not accept, inform them that they face dismissal
8. Begin consultation with recognised union(s)
9. Consult with a view to reaching agreement
10. After consultation, dismiss those not accepting change
11. Dismissal with notice and offer of re-engagement on new terms.

The manager who is considering compulsory contract change should therefore take the following key actions:

- ensure that the case for change is strong and strategic;
- identify the timetable for contract change and keep to it;
- make a genuine effort to persuade staff to accept the change;
- follow precisely the proper legal procedures for consultation and dismissal.

Note on further reading

This section of the paper has focused on the legal issues underlying contract change that are of key importance to the college manager and it has deliberately not quoted greatly from the details of legal cases. Any manager who wishes to go further into the legal background to contract change could start by consulting one of the following:

Income Data Services (1993) **Employment law handbook 55. Contracts of employment**. Incomes Data Services Limited

Aikin, Olga (1992) **Contracts.** Institute of Personnel Management

Du-feu, Vivian (1994) **Croner's guide to contracts of employment.** Croner Publications Limited

Walton, Frank (ed) (1986) Contracts of employment. **Encyclopaedia of employment law and practice.** (2nd ed) Professional Publishing

The college manager and the processes of change

Contract change is clearly a matter of law and a central issue in industrial relations. It is also of prime concern for middle managers charged with interpersonal relationships with colleagues. For them, the effects of such change may be exacerbated by long periods of uncertainty and ambiguity on the one hand, and the need for individuals to take higher profiles in their management and trade union roles on the other. The latter will not always be in the formalised bargaining arena, indeed it is often most stressful for middle managers when it is not. It is then when they are not close enough to the top to know what is going on – but they still have to manage the fears of their colleagues. It is difficult to see how a college manager can stand aside from the processes of innovation, however much some may wish to. Participating in the management of change can be assisted by a recognition of the processes involved. This section therefore seeks to briefly touch upon three dimensions of those processes in ways which are relevant to those charged with supporting the delivery of contract change. The first endeavours to give a short list of key activities inherent in reforms; the second explores the scope for management inputs to the collective process; and the third gives some consideration to the interactions of senior staff with individual colleagues.

Management change processes

A number of texts are available on the management of change, reference is made here only to the identification of six key activities explored by Plant (1987). They point, in general terms, to means by which middle managers can seek to participate in the effective delivery of new terms and conditions.

- *Ensuring early involvement* rather than adopting a detached air is clearly critical and calls for engaging with senior as well as junior colleagues rather than waiting to see or abdicating any role.

- *Working to gain commitment* both from those negotiating on behalf of the employers as well as lecturers will be called for, the latter to accept and recognise change and the former to explore worries and options not already in the negotiating plan.

- *Avoiding over-organising* will tend to come late in the participation by those charged with the delivery of whatever has been determined. It will need to be set alongside steps to ensure that changes flow.

- *Providing help in facing up to change* can take a number of forms. It can mean seeking imaginative ways of tailoring productivity rises to fit the needs of individuals without compromising the new terms. It will also mean seeking ways to counter feelings of devaluation.

- *Communicating continuously*, particularly with key opinion-leaders on both sides, will call for perceptions about who is listened to, and when and how to ensure that messages are received and understood.

- *Turning perceptions of threat into opportunity* is seen by Plant as a key element in managing change. Where colleges can point to future growth, a greater degree of security and/or opportunities to invest in a better and more effective service as a direct outcome of contract change, there is the potential to turn arguments for the need into positive outcomes.

Managing contract change: the collective response

In turning more specifically to the role of the manager as a change agent in relation to the college/trade union interface, it is possible to identify a range of aspects where knowledge and

participation may be important. The following checklist brings forward a number of points that have already been raised and adds others. Some are concerned with the acquisition of knowledge and understanding, others with aspects of skill. The catalogue is not comprehensive but then, not all of the issues will be of equal importance. Taken together however, they provide a better understanding of some of the potentially important issues in the industrial relations dimension of contract change.

- *Understanding the national-college relationships*
  The college is the employer and though it is likely to be a member of the Colleges' Employers' Forum it joined on the basis of local determination of policies. In the current round of discussions it has not been possible to arrive at joint proposals at the national level, therefore both sides have made separate recommendations. This differs from the former delegation of powers by the local authorities to the centre and the use of arbitration to arrive at agreement.

- *Is management consulting or negotiating?*
  It is for the college to determine whether it wishes to consult or bargain. In the case of the former it reserves the right to decide but seeks advice and opinion before doing so. With the latter both parties are power-sharing and are committed to supporting the common agreement. Managers need to know the position taken by their employer, and ensure that it is commonly understood.

- *Clarity as to empowerment – who decides what?*
  Part of the confusion sometimes found in consultation and negotiation is a lack of clarity about progress in relation to who is empowered to decide what, particularly when those debating issues seem to have reached an accord only to find that one side has to refer the matter on. On the management side it will be necessary to be clear whether ratification is required by the corporation or its personnel committee. On the union side the branch may have to put its recommendations to regional and possibly national committees. Delays have been known to lead to a loss of good faith and even subsequent change, devaluing the process due to a lack of clear understanding.

- *Discussion/comment on the critical agenda items*
  Managers across the college may need to know of, and participate in the identification of, key issues, exploration of the range of options, and debate on the college's preferred outcomes. For example, in relation to the proposed change of contracts for lecturers:

  Does the college want all or a proportion to change?

  What is the efficient and effective/deliverable length of the week and year for three to five years ahead?

  Is a case-loading approach preferable to the more traditional class contact measure?

  How can/should the pay and grade structure be changed?

- *If it is negotiation what is the college's BATNA?*
  The managers may need to participate in determining the best alternative to a negotiated agreement (BATNA) before any breakdown is reached. For this to be effective, it will need to be known, supported and be deliverable by managers across the college.

- *Identify win-win options and trade-offs if you wish to treat others as you would wish to be treated*
  If a win-win position is to be achieved it may be best supported by brainstorming ideas among college managers and using them as a basis for evaluating options that the team can have available.

- *Identify the end-point and work the calendar backwards*
  The point where no decision becomes a decision in itself will relate as much to the operational practices of the college as to the legal position. On the one hand, periods of notice and consultation with the recognised trade unions will generate one calendar. This has, however, to mesh with

the operational practices of the college year if change is to be effected without implementation becoming a major disruption to the good running of the college. Timetabling and marketing decisions need to be set alongside personnel issues.

- *Keep up to date with the procedural position including the calendar, the agendas and the outcomes*
  Rumour can be the lifeblood of the college in a period of rapid change. Middle managers are in a prime position to communicate but only if they keep, and are kept, abreast of developments. It is important to be certain of the status of statements and observations. Knowing when meetings are being held, what is on the agenda, whether the minutes are draft or confirmed and who has power of approval can be of particular significance.

- *Know very clearly why! Know what you value most, why you are doing it and communicate the reasons constantly*
  Without reference back to values and reasons, decisions may become tangential or even in conflict with original intentions. Further, one of the few things that seem certain in times of stress is that motives will be attributed which seem at odds with those that key players believe they hold.

- *Restrain the mavericks, and stiffen up the ostriches*
  In any group facing issues not met before there will be those who take views which differ strongly yet success will call for a high measure of cohesion. It can help to know whether you are perceived by others as a maverick or an ostrich, and what you think you might seek to do about it.

- *Empathise but plan for the expected responses*
  Understanding and sympathising does not necessarily equate with agreeing, though this may not always be recognised in the heat of debate. Empathy can assist in identifying and preparing for responses but the manager's position may need to be set out clearly.

- *Know the college policy/requirements on the partial performance of work*
  Working to rule can be both an individual and a collective action. Where it is a position taken by one colleague it may be resolved by private discussion. However, where it is the latter, managers can expect and call for a clear college position. This issue is addressed again later.

- *Look for clear/shared definitions and understandings of 'agreements' and discuss in detail how they are to be implemented*
  It has not been unknown for long and complex sessions to be dedicated to understanding minutiae of what has been agreed, and for equally long periods then to be given to writing down that agreement only for different interpretations to arise across the college. Managers need to be informed of and to be able to question what has been arrived at in terms of the spirit as well as the technical interpretation of the outcomes.

- *Plan ahead, think strategically and avoid knee-jerk reactions*
  The conclusion of the formal debate and argument and the drafting on any written statements is only the ending of one phase and the beginning of another. Interpretation and implementation whilst the issues are still fresh can be expected to be followed in due course by monitoring and re-interpretation. This should not be seen as a criticism but rather as an outcome of a complex and on-going process. The very act of unfreezing and recasting a particular aspect of college practice, particularly one as important as contract change, may predispose the organisation to continue with the processes of collective development. It is therefore wise to plan ahead for the next cycle of changes whilst congratulating those who carried the current round through.

Working with colleagues: staff responses

The third dimension explored here turns to the manager and individual colleagues who can be expected to display a range of responses as the

debate rolls forward. Some colleges and departments may expect to experience the sequence identified by Casey (1983), particularly where the changes are associated with other stresses such as budget cuts and job losses. Recognition of the following elements may help in understanding the current position and preparing for what may follow:

stage 1: from disbelief;

stage 2: through annoyance;

stage 3: frustration;

stage 4: anger;

stage 5: fear; to

stage 6: cannibalism.

Identification may help staff as well as managers to come to terms with responses that are normal but disturbing. Colleagues can be expected to feel strongly, particularly if they consider they are being devalued and/or threatened. It is not unknown in such circumstances for the fear to turn inwards when acceptance of the inevitable comes around and reaction sets in.

Partial performance of duties is a favoured ploy of trade unions as well as individuals and working to rule has been practised in the past in colleges. Too rarely, however, have colleges made their expectations of lecturers clear in advance in relation to implicit as well as explicit terms of the contract. Implicit terms are those which are essential to provide effect to the delivery of the contract though not set out in any specific or written form. The Silver Book may not thus specifically record that enrolling students, recording their attendance or marking their work are specified duties but where colleges have been dependent on such provisions they could argue that they are implied terms. Where this is the case colleges are then in a position to indicate a possible hierarchy of penalties before staff decide to act rather than afterwards. It is perhaps unfortunate that clarity only tends to come through the heat of industrial action. Line managers are then charged with identifying any partial performance in a climate of retaliation when the punishment is seen as ill-fitting an action whose legitimacy is challenged after the event. If, as has been suggested, up to one-third of a lecturer's activities is currently undertaken outside contractually defined times of the 30 hour week and 38 week year it may not seem surprising that the new contract seeks to subsume much of this time. A clearly regulated organisation is unlikely to wish to fall back on the interpretation of implied terms or the long-lost preamble to the original national conditions of service documentation which made reference to the recognition of the extended professional role.

What next?

This final section is clearly not the conclusion of the processes of change but rather a recognition that it will be on-going, as it has been in the past. Whereas the changes used to come from outside the college, and the local authority too, the ownership is now clearly with the institution. It is difficult to see how a major structural issue such as that now under review could have been planned and prepared for differently by a set of institutions that had previously had only limited contact and experience of industrial relations. That will not be the case in the future and even before the current round of changes are resolved it can be argued that it behoves colleges and managers to be looking ahead. There is a need now to be looking to 1998 and beyond in terms of planning for human resource management which will underpin the strategic plan. Few establishments are likely to be of the view that the immediate future offers stability or growth which can underpin the last dot and comma of the current terms of employment of staff. Change, even if it is little more than fine tuning to the outcome of the present interventions, is likely to be projected. In what areas, how it may best be effected and by whom needs to be considered in good time in the light of lessons learnt, for that surely is the very essence of the educational process.

The scale and pace of modification over the next three years may be difficult to forecast with any accuracy but nonetheless attempts can be made. In general terms the college can explore how it has responded to date and how it may wish to prepare for the future. It can drift on whatever currents take it, and thus shift in response to pressures from trade unions or other bodies such as the CEF or FEFC without taking any serious part in exploring direction. Should this seem improbable it may be as well to remember that this has been the position up to now. It is unlikely

that many, if any colleges, will be able to put the clock back or adopt a tokenist approach of using the words but changing little or nothing. In such circumstances the options would seem to be ones of hoping that future changes will be little ones, adopting crisis management or planning efficiently for change.

Critical to such forward planning will be corporate views on the managed pace of change and the integration and cohesion of the management position. One natural response to a big-bang shift is to let the dust settle and re-assess the new position. Defending the status quo wherever possible will turn to matters of detail and interpretation where the position of the line manager will be critical. In shifting to a proactive approach distinctions can be drawn between incrementalism, opportunism and gradual but planned implementation. The first is seen here as being slow change with one shift building on another but not always in a consistent direction. Opportunism is more active but often leads to *ad hoc* accretions that may not stand the light of collective scrutiny, particularly when adjustments made in one part of the college are seen to differ from those of others. Gradualism is further along the continuum leading to radical change in that direction is known and consistent. However, in the words of Chris Grice of ACAS it is the process of being able 'to eat the elephant of change slowly' (1993).

A second critical dimension of change to be addressed by colleges is the balance to be struck between individual and collective agreements. Colleges have come from a culture based primarily on a trade unionised workforce with contract terms being primarily determined at national level, albeit with specified aspects set locally within a given framework. This has become less the case as the corporation's remuneration committee has come to terms with the most senior posts, and as senior managers change their roles and relationships. Further trade union recognition is not as simple and clear as it once seemed to be, even if the UNISON merger has done much to rationalise the position in relation to support staff in colleges. There is a trend, albeit a small one in many colleges, away from collective bargaining towards individual agreements. In at least one instance this is now not only the preferred but the operational model.

Forward planning will need to consider where, how far and how fast change should be pursued next. In doing so it will be necessary to take account of the managerial as well as the technical and legal issues. Not only must staff morale be weighed but account will have to be taken of the ability, development and load placed on those charged with leading and delivering the outcomes. Much can be learnt from the learning experiences provided by the current round of contract change issues. From these can come guidelines for the future which will need to inform forward planning for the processes are rarely without stress which will call for both firm and sensitive handling. The middle manager is a critical partner in the college team in achieving the effective delivery of change.

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Appendix 1: Options for gradual change: resignations, retirements and dismissals

1. Resignations
2. Retirements at 60 or 65
3. Fractional posts, stepping down/job shares
4. ETL ('encouragement to leave')
5. Dismissal on grounds of gross misconduct
6. Dismissal on grounds of incompetence
7. Dismissal on grounds of ill health
8. Retirement on age grounds
9. Efficient exercise of the service (50+)
10. Efficient exercise of the service – enhancement
11. Voluntary redundancy
12. Voluntary redundancy plus efficient exercise
13. Voluntary redundancy plus efficient exercise
14. Compulsory redundancy

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